

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 221 of 1996

For Approval and Signature:

Hon'ble Mr.Justice S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ABDUL AZIZ ALLANUR

Versus

STATE OF GUJARAT

Appearance:

MR. B.N.KESHVANI for Petitioners
PUBLIC PROSECUTOR for Respondent No. 1

CORAM : S.D.PANDIT,J.

Date of decision: 24/09/96

ORAL JUDGEMENT

The accused in Sessions Case No.131/91 on the file of Additional Sessions Judge,Dist : Ahmedabadd (Rural) have preferred the present Revision Application against the order passed by the learned Additional Sessions Judge on 4-6-1996.

2. The present petitioners are chargesheeted by the police for having committed offence punishable under

Sections 498 (A), 304 (B), 306 and 114 of the Indian Penal Code on the allegations that the deceased Nasim wife of petitioner No.1-accused Abdul Aziz was treated with cruelty and she was induced to commit suicide on the night between 9 and 10th of November,1990. It seems that when police got information about the death of Nasim, they had received an intimation that she had committed suicide, therefore, Accidental Death Entry No.87 of 1990 was made in the register at 9-00 hours. On reaching the place where the dead body of said said Nasim was lying a Panchnama of scene of offence was prepared and inquest Panchnama was also prepared and the statement of present petitioner No.1-accused was also recorded in the said inquiry in the accidental death entry No.87 of 1990. But thereafter, on the arrival of brother of the deceased Nasim and other relatives and on recording the statement of the brother of the deceased, Mohmedshafi, the police registered the first information report on the strength of his statement for the said offence punishable under sections 498 (A),304 (B), 306 and 114 of IPC and then they started the investigation in the Crime Register No.I-711/90. After completion of necessary investigation, a chargesheet has also been filed against the present petitioners-accused and the accused were committed by the Judicial Magistrate to the Court of Sessions and on account of the said committal order, Sessions Case No.131 of 1991 was registered against the present revisional petitioners.

3. In the Sessions Case, for the first time on 28th February,1996,the present revisional petitioners had filed an application alleging that in the A.D.Inquiry under Section 174 of Criminal Procedure Code, there was recording of the statements of the witnesses who are cited as eye witnesses in the chargesheet were recorded and that they should be supplied the copies of the same. It seems that on that application of the present revisional applicants, the Public Prosecutor had endorsed that the papers of the inquiry under Section 174 were not with the police and they were with the Prant Officer i.e. Sub Divisional Magistrate. In view of the same, the learned Addl.Sessions Judge rejected the said application by saying that the accused would be at liberty to summon those documents by seeking issuance of witness summons and could make use of the said document in order to defend petitioners. Thereafter,the present petitioners had approach the Sub Divisional Magistrate for getting certified copy of the said statements,but Sub Divisional Magistrate rejected the claim by saying that papers of the Inquiry under Section 174 of Cr.P.C were not lying with him. Therefore, , the petitioners approached the

District Suprintendent of Police for getting the certified copies of the statements, but the District Suprintendent of Police rejected their claim by saying that they would be supplied the copies of the same only in case if the Sessions Court orders to do so. Thereafter, the present petitioners had filed an application before the learned Additional Sessions Judge seeking order of the learned Additional Sessions Judge to supply the copies of the statements recorded in the inquiry u/S.174 of Cr.P.C.

4. After filing of the said application, the prosecution was directed to give it's say and the Investigating Officer of the Sessions Case filed his affidavit stating therein that the Accidental Death Entry was made in the Accidental Death Register on the strength of the statement of the accused No.1 at about 9-00 hours on 10-11-1990 and thereafter the Panchnama of the scene of offence was made and the Inquest Panchnama was prepared. By that time deceased's brother Mohmedshafi and other relatives came and on making inquiries with them, the statement of Mohmedshafi was recorded and the said statement was registered as First Information Report at 12-00 hours and then the investigation was started. Thus, an affidavit was filed before the Additional Sessions Judge stating therein that in the inquiry u/S.174 except recording statement of accused No.1, no other statement was recorded. The learned Sessions Judge, thereafter, passed his detailed order and while passing the said detailed order on 4th June, 1996, he directed the prosecution to supply the copies of the statement recorded in the inquiry u/S.174 of the Cr.P.C., the copy of the A.D. Report and the copy of the report submitted to the Sub Divisional Magistrate, Inquest Panchnama and the Panchnama of the scene of offence, though those copies were already supplied to the accused in order to avoid any injustice to the accused.

5. The petitioners have come in revision against the said order. It is the contention of the learned advocate for the petitioner that the petitioners had filed their re-joinder to the affidavit filed by the Investigating Officer and they had also filed one affidavit of their defence witness and they had sought the Investigating Officer who had filed affidavit to be called as a witness and tender for his cross-examination, but as the said request of the petitioner has been turned down, the order of the learned Additional Sessions Judge is illegal and invalid.

6. The learned advocate for the petitioner in

support of his contention that the learned Addl.Sessions Judge ought to have summoned the Investigating Officer who had filed the affidavit and ought to have allowed to cross-examine him has put reliance on Section 296 of the Code of Criminal Procedure. In order to appreciate his submission, it is necessary to quote here the provisions of Section 296 which runs as under :

296 (1) The evidence of any person whose evidence is of a formal character may be given by affidavit and may, subject to all just exceptions, be read in evidence in any inquiry, trial or other proceeding under this Code.

(2) The Court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any such person as to the facts contained in his affidavit.

7. The learned advocate has put reliance on sub-Section 2 of Section 296 of Criminal Procedure Code in support of his contention that the learned Additional Sessions Judge ought to have allowed him to cross-examine the Investigating Officer who had filed the affidavit denying the claim of the petitioners that no statements of any witness were recorded in the inquiry u/S.174 of the Criminal Procedure Code. At the outset it may be said that the provisions of Section 296 are not at all applicable to the controversy in question. The controversy in question was not an inquiry as contemplated by the Code of Criminal Procedure. No doubt, under the law, the accused is entitled to get the copies of the documents in order to defend himself properly. It is also the duty of the Sessions Judge to see that the accused is supplied the copies of the documents required by him in order to defend himself and that no prejudice is caused to the accused. But that doesn't mean that when the Addl.Sessions Judge is considering the application of the accused to supply the copies of certain documents in order to defend him properly, learned Sessions Judge is holding an inquiry under the Criminal Procedure Code. It is settled law that if the accused is not supplied the copies of the relevant statements and documents which he needs in order to defend himself, the court is entitled to draw an adverse inference against the prosecution and the prosecution will have to face the necessary legal consequences for not availing the documents which are in the possession and custody of the prosecution and which were required by the accused to defend him properly.

Therefore, when the court is considering the claim of the applicants-accused for getting the copies of certain documents which the accused needs in order to defend himself properly, for that purpose, the court is not either holding an inquiry or holding any trial . The Investigating Officer has filed his affidavit stating therein that in the inquiry u/S.174 of Cr.P.C., except recording statement of accused No.1, preparing of the Panchnama of scene of offence, preparing of Inquest Panchnama,, no other statements were recorded. No doubt, it is the claim of the petitioners that statements of all the witnesses which are named in the chargesheet were recorded in the said inquiry. When the Investigating Officer has filed such an affidavit, at this stage, it is not possible for the learned Sessions Judge to go into the merits and details of the said claim of the petitioners. The petitioners will be at liberty to make the necessary foundation during the cross-examination of the witnesses to support this contention and if they succeed in establishing their claim, then the prosecution will have to suffer necessary consequences for non-supplying of the statements to the revisional petitioners-the accused. But as the position stand today in view of the specific affidavit filed by the Investigating Officer, the trial must be proceed on the basis of the same. It is not at all necessary to interfere with the order passed by the learned Additional Sessions Judge and to issue any direction to him.

8. Therefore,in the circumstances, I reject this application. The interim order, if any, stands vacated. The learned Sessions Judge should expedite the trial of the said Sessions Case.

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